REMARKS

The present application has been reviewed in light of the Office Action mailed on November 17, 2006. Reconsideration of the present application is respectfully requested in view of the following remarks.

Claims 1 through 18 and 28 through 48 are pending in the instant patent application. Claims 47 and 48 are added with this amendment. Claims 1, 28, 46, and 47 are the four (4) independent claims. Claims 2 through 18 and 48 depend from claim 1. Claims 19 through 27 were cancelled from the application. Claims 29 through 45 depend from independent claim 28.

Claim Rejection - 35 U.S.C. § 102

The Examiner has rejected Claims 1 through 13, 16 through 18, 28 through 40, and 43 through 46, under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,836,943 to Miller, III (hereinafter "Miller"). Applicant has amended Claims 1, 28 and 46 to better distinguish applicants' present disclosure from Miller. In particular, applicant has amended Claims 1 so that this claim now recite "...applying a first pulse of RF energy to tissue having a duration of less than about 200 milliseconds to limit excessively heating tissue; and measuring a value of an electrical characteristic of tissue in response to the first pulse of RF energy..." Claim 28 now recites "...means for applying a first pulse of RF energy with a pulse duration of less than about 200 milliseconds to the tissue wherein the characteristics of the first pulse are selected as to not excessively heat tissue..." Claim 46 now recites "...applying at least one subsequent RF energy pulse to the tissue and keeping constant or varying RF energy

parameters of individual pulses of subsequent RF energy pulses in accordance with at least one characteristic of an electrical transient that occurs during at least one RF energy pulse, wherein one of the at least one characteristic includes the duration of the electrical transient." The dependant claims have also been amended to correspond to their respective claims.

According to § 2131 of the MPEP, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Applicant respectfully submits that this rejection should be withdrawn because Miller in no way anticipates the amended claims for a myriad of reasons. For example:

a) Miller does not teach or anticipate the step of "...applying a first pulse of RF energy to tissue having a duration of less than about 200 milliseconds to limit excessively heating tissue; and measuring a value of an electrical characteristic of tissue in response to the first pulse of RF energy..." Nowhere does Miller describe, disclose or teach the duration of a pulse, nor does Miller teach or anticipate having a first pulse duration to limit excessively heating tissue as presently claimed.

b) Miller does not teach or anticipate a "...means for applying a first pulse of RF energy with a pulse duration of less than about 200 milliseconds to the tissue wherein the characteristics of the first pulse are selected as to not excessively heat tissue..." No where does Miller describe, disclose or teach selecting characteristics of the first pulse. More specifically, Miller does not teach or anticipate selecting characteristics of the first pulse as to not excessively heat tissue.

c) Miller does not teach or anticipate the step of "...applying at least one subsequent RF energy pulse to the tissue and keeping constant or varying RF energy parameters of individual pulses of subsequent RF energy pulses in accordance with at least one characteristic of an electrical transient that occurs during at least one RF energy pulse, wherein one of the at least one characteristic includes the duration of the electrical transient." (See para 77) Miller simply teaches measuring tissue impedance or complex tissue impedance. There is clearly no mention in Miller of measuring the duration of an electrical transient, nor does Miller anticipate measuring the duration of an electrical transient.

In view threreof, it is respectfully submitted that Claims 1, 28 and 46, as amended, are clearly patentably distinguishable from the Miller disclosure and the rejection of Claims1, 28 and 46 and any claims depending therefrom should be withdrawn.

Claim Rejection - 35 U.S.C. § 103

The Examiner has rejected Claims 14, 15, 41, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of United States Patent No. 5,558,671 to Yates, et al. (hereinafter "Yates"). By this amendment, applicants have amended independent Claim 1, on which Claims 14 and 15 depend, and independent Claim 28, on which Claims 41 and 42 depend. Based on the discussion and amendments to Claims 1 and 28 as noted above, Claims 14, 15, 41 and 42 should also now be in condition for allowance.

In addition, Claims 14 and 41 have been amended to better distinguish

applicants' present disclosure from Miller in view of Yates. In particular, applicant has amended Claims 14 and 41 so that this claim now recites the step of: "...using the measured impedance value to readout at least two or more RF energy parameters from an entry in one of a plurality of lookup tables."

The look-up table in Yates describes a function of the minimum impedance value and is used exclusively for determining this value.

> Depending on the instrument used and/or the actual desired result, the actual function of minimum impedance may vary."... It may be continuous, non-continuous, linear, non-linear, a piecewise approximation and/or in the form of a look-up table." (see col. 8, lines 14-23)

As clearly stated in the above cited passage, the look-up table in Yates is used to provide a single value. In the disclosure and as presently claimed the look-up table is used to readout at least two or more RF energy parameters that describe the characteristics of the energy pulse.

Applicant submits that Yates does not sufficiently teach the use of a look-up table to cure the deficiencies in Miller, thus amended Claims 14 and 41 are patentable for the reasons discussed above. Accordingly, for at least the reasons given above, withdrawal of the rejection under 35 U.S.C. §103(a) over Miller in view of Yates and allowance of Claims 14 and 41 are respectfully requested. Additionally, Claims 15 and 42 which depend directly from upon Claims 14 and 41, respectively, are also believed allowable.

Claim Rejection - Doctrine of Obviousness-type Double Patenting

Claims 1 through 18, and 28 through 46 were provisionally rejected under the judicially created Doctrine of Obviousness-type Double Patenting as being unpatentable over the claims of copending Application No. 10/761,524. A terminal disclaimer is filed concurrently with this amendment. The terminal disclaimer is proper to traverse the rejection since the present application and copending Application No. 10/761,524 are commonly owned.

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of all pending claims are earnestly solicited.

Should the examiner believe that a telephone interview may facilitate prosecution of this application, the examiner is respectfully requested to telephone Applicants' undersigned representative at the number indicated below.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

Respectfully submitted.

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